S.B. CIVIL MISC. APPEAL NO.973/2006
(Smt.Kusum & ors. Vs. Jawari Lal & others)

DATED : 21.07.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Mahendra Singh Kachhawaha for the appellants.

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By way of this appeal against the award dated 03.01.2005 made by the Motor Accidents Claims Tribunal (I) Jodhpur in Claim Case No.12/2003 the claimant-appellants seek enhancement over the compensation amount of Rs.12,53,000/- awarded by the Tribunal on account of accidental death of Shri Mahendra Singh, husband of the appellant No. 1, father of the appellants No. 2 & 3 and son of the appellants No. 4 & 5 .

On 02.05.2002, the deceased Mahendra Singh, taking his children claimants No. 2 & 3 with him, was riding his motorcycle bearing registration No. RJ 19 13M 8048 coming to Jodhpur from Falna via Pali; at about 8.00 p.m. on the highway the motorcycle was hit by an on-coming truck bearing registration No. RNQ 4401 causing injuries to the riders of motorcycle; and Mahendra Singh succumbed to the injuries on the spot.

The present appellants claimed compensation on account of accidental death of Mahendra Singh stating his age at 36 years, being engaged in government service on the post of Junior Instructor (Fitter) in Industrial Training Institute, Falna and his salary income at Rs.9,435/- per month.

The learned Judge of the Tribunal found the acciden t to have occurred for rash and negligent driving of the offending truck bearing registration No.RNQ 4401 and held the respondents liable for compensation. While taking up quantification of compensation, the learned Judge found that after deductions, the deceased was getting net pay at Rs. 7,575/- per month; and after deducting one-third for his personal expenditure and applying a multiplier of 16 calculated net loss at Rs. 9,69,600/- and added further 25% of this amount at Rs. 2,42,400/- towards future prospects. In this manner, total pecuniary loss figure allowed by the learned Judge stands at Rs. 12,12,000/-. The learned Judge of the Tribunal has also awarded Rs.10,000/- as funeral expenses, Rs. 1,000/- transportation expenses and Rs.30,000/- towards loss of consortium to the wife and loss of love, affection, guidance and service to the other claimants. The Tribunal has, therefore, made an award in the sum of Rs.12,53,000/- in favour of the claimants and has allowed them interest at the rate of 9% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellants has contended that looking to the age and income of the deceased and future prospects, the amount awarded by the Tribunal remains too low and deserves suitable enhancement. Learned counsel contended with reference to the Last Pay Certificate of the deceased (Ex. 13) that nothing was deducted from his salary and, therefore, the Tribunal has been in error in deducting Rs. 1,860/- while calculating his salary income. Learned counsel also submitted that the Tribunal has erred in awarding interest only at the rate of 9% per annum.

Having examined the considerations adopted by the Tribunal and the award in its totality this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

The deceased was 36 years of age and working on the post of Junior Instructor. Calculation of the figure of loss of dependency on the basis of his last pay certificate cannot be said to be erroneous. The learned Judge of the Tribunal has rightly calculated the net income of the deceased at Rs.7,575/- after deductions of Rs.1,860/- as spelt out in the last pay certificate itself, towards GPF, GPF loan, State Insurance etc. Moreover, even if there was a little bit of inadequacy in calculation of net income, the same has clearly been made up by application of the maximum multiplier of 16 though the multipli-

er could have been lesser in the fact situation of the present case. Yet further, the learned Judge has added 25% to the net figure of loss of dependency and has ultimately arrived at a figure of Rs.12,12,000/- towards pecuniary loss. The estimation by the learned Judge of the Tribunal cannot be said to be lower than the figure of just compensation; and rather stands on higher side when viewed in the context of the fact that the wife of the deceased has been accorded compassionate appointment in his place. Other part of compensation towards funeral expenses and non-pecuniary losses is also not on lower side. The Tribunal has further awarded interest at the rate of 9% per annum and in view of the liberal award made by the Tribunal, such choice of rate of interest also remains on higher side.

In the ultimate analysis, this court is satisfied that the impugned award remains rather on the higher side and there is no scope for further upward revision in the award made in favour of the claimant-appellants.

In this view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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